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In the

# Supreme Court of the United States

OCTOBER TERM, 1961

UNITED STATES OF AMERICA,

*Appellant,*

*v.*

EVETTS HALEY, JR.,

*Appellee.*

*On Appeal From the United States District Court for the Northern District of Texas*

UNITED STATES OF AMERICA,

*Petitioner,*

*v.*

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

*On Motion for Leave to File a Petition for a Writ of Mandamus and On Petition for a Writ of Mandamus*

## Statement Opposing Jurisdiction, Motion to Dismiss or Affirm, Statement Opposing Leave to File Petition for Writ of Mandamus and Petition Therefor

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No. 1003

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*On Appeal From the United States District Court for the Northern District of Texas*

## STATEMENT OPPOSING JURISDICTION, MOTION TO DISMISS OR AFFIRM

### FOREWORD

On February 24, 1959, this Court disposed of a prior Appeal, by Appellant in this cause, by a Per Curiam decision: "The Judgment is reversed. *Wickard v. Filburn, 317 U. S. 111.*" The Court then issued a mandate to the District Court making the false recital:

> "This cause *came on to be heard* on the transcript of the record from the United States District Court for the Northern District of Texas, and *was argued by counsel.*"

The falsity of the emphasized statements is evidenced by the record. No hearing was ever had, and this Court flagrantly violated its own rules stipulating that an appropriate

order be entered accepting jurisdiction, denying jurisdiction, or reserving the question of jurisdiction until hearing on the merits *(Rule 16, Sub. Para. 4)*. A hearing on the merits was never granted, and if the case "was argued by counsel", the argument must have been presented in Chambers by Appellant's Attorneys. Counsel for Appellee were denied both argument and the right to file a Brief on the merits.

The extra-legal action of this Court has produced confusion to such an extent that Appellee now finds himself compelled to defend a direct Appeal to this Court, to oppose an Application for Leave to File a Petition for Writ of Mandamus in this Court, and to defend against an Appeal to the United States Court of Appeals, Fifth Circuit—all simultaneously generated by the entry of one order.

Since Appellee still has hope that the Star Chamber Justice of Henry VIII, administered Appellee on the previous Appeal, is the exception rather than the rule in this Court, he will make another effort to demonstrate, to this Court's satisfaction, that it has no more jurisdiction of this Appeal than it had of the prior Appeal.

## STATEMENT OPPOSING JURISDICTION

### OPINION BELOW

The only opinion relevant to determination of jurisdiction of this Appeal is the unreported opinion of the United States District Court for the Northern District of Texas, set out in Appellant's Statement of Jurisdiction. (App. E, pp. 18a-25a.)

The Judgment entered upon the opinion reported in *166 F. Supp. 336*, was reversed on *one* point of law only. Even if such reversal were legal, there is no law authorizing a second appeal to permit Appellant to remedy errors committed in filing of his first appeal.

The reversal of February 24, 1959, if legal, established the "law of the case" for the District Court only as to the question supposedly reviewed:

> "Whether the *civil* penalty imposed by the Agricultural Adjustment Act of 1938 for wheat produced in excess of a farm's wheat acreage allotment is, as applied to wheat wholly consumed on the farm, within the commerce power of Congress."

Such decision was wholly ineffective to establish the "law of the case" as to the *eleven* other constitutional issues tried before the District Court; the issue as to *whether or not the Secretary's interpretation and application of the Act was constitutional, or void as against public policy;* and the issues as to whether or not the Appellant had complied with *six conditions precedent* to imposition of the penalty. These issues were called to the Court's attention in Appellee's Statement Opposing Jurisdiction and Motion to Dismiss or Affirm (pp. 6, 7) filed in Appeal No. 587, October Term 1958. Appellant failed to deny these issues and did not contend that the Trial Court erred in rulings made thereon. At page 2 of its reply to said Statement it alleged: "The court then disposed of the case *solely* on the theory that the Agricultural Adjustment Act of 1938 is unconstitutional *as here applied* because wheat consumed on the farm, rather than marketed as such, is

not subject to the commerce power." This admission confirmed Appellee's and the Court's contention that the Act was not held unconstitutional, but *that the application of it by the Secretary of Agriculture* was in violation of the Constitution.

The Court's refusal to consider the issues pointed out by Appellee leads to the conclusion that this Court did not consider them within the question submitted by the Appellant on the first Appeal. Therefore the reversal by this Court of one alleged finding of law, could not be construed to overrule the Trial Court's express finding that "the law and the facts are with the Defendant and against the plaintiff". Appellant is without authority to question those findings on this Appeal.

Therefore Appellee contends that the District Court's decision herein on September 10, 1958 is not involved in determining whether this Court has jurisdiction of this Appeal.

## JURISDICTION AND QUESTION PRESENTED

Appellant bases its claim to this Court's jurisdiction of the present appeal upon *28 U. S. C. 1252.* (S. J. p. 2.) An examination of the provisions of this section (S. J. App. G, p. 27a) shows that it authorizes a direct appeal to this Court *only* "from an interlocutory or final judgment, decree or order of any court of the United States * * * holding an Act of Congress unconstitutional * * *." The Appellant as pointed out above admits that the *application* of the Act was what the Court held unconstitutional and this holding is not sufficient to activate the cited statute.

The "Question Presented" by the Appellant: "Whether a district court could properly ignore the mandate of this Court reversing its judgment * * *" wholly fails to present a question subject to review under the cited statute.

The Government's secondary claim to jurisdiction is predicated upon this Court's authority to enforce its Judgments and Mandates. Had this Court granted a hearing on the merits of the first appeal, and had the Government attacked all of the findings of fact and law cited by the Trial Court in support of its Judgment, then there might be some merit to Appellant's contention. However, since this Court ruled upon only *one* point of law, without purporting to overrule or pass upon the others involved, it established the "law of the case" for the District Court *only* as to the point ruled on.

Moreover, though this Court apparently missed the Appellant's admission that it was the Court's holding that, *as applied*, the Act was unconstitutional. The Trial Judge has, in two opinions, stated that he did not hold the Act unconstitutional, and has noted that a single judge is prohibited by law from making such a decision. The record clearly supports the Judge's statement, for the trial court denied Defendant-Appellee's prayer for trial by a Three-Judge Court, after which he abandoned his prayer for injunction.

After reversing the Trial Court as to its alleged ruling upon *one* point of law, this Court remanded the case without instruction. A reversal establishes the "law of the case" for the lower Court *only* as to the points passed on in the appeal.

If the Government, illogically fighting shadows, failed to attack all findings upon which the District Court founded its decision, then it cannot now be contended that the District Court is in error in refusing to accept the Appellant's interpretation of what this Court's decision meant; the Trial Court has said that he did not base his decision on the premise submitted to this Court on the Appeal; neither the Government nor this Court have authority to dictate a Trial Judge's decision. The reversal of *one* point of law offers no foundation for the Government's claim that the District Judge must therefore reverse himself on all other findings; clearly such a contention would charge this Court with a usurpation of authority nowhere granted in law.

The District Judge stated that an order made by this Court, without its jurisdiction, is a nullity. This proposition is fundamental law and this Court is no exception to the rule. This Court has never, under its own rules, accepted jurisdiction; it has never been established that the District Court held an Act of Congress unconstitutional within the meaning of the cited section 1252. Without jurisdiction, this Court's orders have no greater effect legally than the wishful statements made by Government Counsel seeking to salvage a case lost, not on stipulated facts, but on the merits, after trial by the Court.

Appellee submits that this Court has no jurisdiction of this Appeal.

## STATUTES INVOLVED

The Appellant has quoted *Section 1335 of Title 7 U. S. C.* as being applicable to the case. Should the Court examine this Section (S. J. App. G, pp. 28a, 29a) it will find that *the statute is applicable* "to any crop of wheat harvested in 1958 or any subsequent year". It is undisputed that the crop, upon which the penalty is sought to be imposed in this law suit, was harvested in 1956, *two years before the harvest* of the first crop subject to the cited statute.

Appellant has wholly failed to call to this Court's attention the following pertinent provisions of *Title 7 U. S. C.*:

"§ 1282—Declaration of Policy. * * * and to regulate interstate and foreign commerce in cotton, wheat, corn, tobacco, and rice to the extent necessary to provide an orderly, adequate, and balanced flow of such commodities in *interstate and foreign commerce* * * *."

"§ 1301 (A) (3) For the purposes of this Chapter and the declaration of policy * * * the term 'interstate and foreign commerce means sale, *marketing*, trade, and traffic *between* any State or territory * * * and any place outside thereof; or between points within the same State or Territory * * * through any place outside thereof;' * * *."

"§ 1335 (b) The amount of the national marketing quota for wheat shall be equal to a normal year's domestic consumption and exports plus 30 per centum thereof, *less* * * * (2) *the estimated amount of wheat which will be used on farms as seed or livestock feed during the marketing year.*"

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## STATEMENT BY APPELLANT

In Appellant's "Statement" (S. J. p. 3) it is said: "At the trial, appellee's evidence did not controvert the factual allegations of the complaint." Appellee chooses to attribute this gross distortion of the record and repudiation of the District Judge's statement, to the fact that Appellant's present Counsel took no part in the trial of the case nor in the prosecution of the first appeal herein. Such concession to Government integrity is made despite the fact that the record shows that the Government insists in this case that the penalty sought to be collected under the Agricultural Adjustment Act of 1938 is "civil", while in *Western Fruit Growers v. United States, 124 Fed. 2d 381,* the same Government successfully sustained the proposition that the same Act was a "penal statute", to oust the California State Court of jurisdiction thereunder. Such inconsistency is no less appalling to Appellee, than this Court's repudiation of controlling statutes and its own rules in disposing of the first appeal filed herein.

## CONCLUSION

A reading of the statutes set out above shows that Congress declared its policy in enacting the Agricultural Adjustment Act of 1938 to be "*to regulate interstate and foreign commerce in cotton, wheat,* corn, tobacco and rice." It defined the commerce which it proposed to regulate to include "*marketing* * * * *between* any State and any place outside thereof." The marketing definitions relied upon by appellant must be applied in relation to these definitions, and limited to "marketing" *between* the states. Such a construction is a

fair interpretation of the Congressional intention to act only within the scope of the power granted to it by the Constitution, and is the construction given the Act by the District Court in the instant case.

The District Court having found: "Has this man anything to do with commerce? Only in production. You have to extend the law to production in order to administer any punishment in this case," held: *"I consider the interpretation of the Act given by the Department of Agriculture as being against public policy and as destructive of a great branch of our civilization, the Agricultural Branch."*

Clearly this is not a holding that the Act was unconstitutional within the specifications of *Section 1252*, supra. It is equally clear that since *Section 1335 (b)*, supra, expressly directs the exclusion of wheat used for seed or feed for livestock on farms, in computation of the national marketing quota by the Secretary, that the Congress did not contemplate that seed and livestock feed were to be subject to regulation. The acclaimed authority, *Wickard v. Filburn* made no effort to concede to Congress the intention to act within its delegated powers; it is authority for nothing, since the failure to establish what disposition was made of the wheat involved dissipates the illusionary justiciable controversy. It should be excluded from the law of this country, as an unwarranted abandonment of the authority of this Court to the pressures of well meaning but misguided political demagogues. As stated by Justice Brennan in *United States v. Rains, 362 U. S. 17*, writing for the Court: "This Court, as is the case

with all federal courts, has no jurisdiction to pronounce any statute, either of a State or the United States, void because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies." Conversely, this Court has no right to abstractly declare a statute to be constitutional as applied to all cases; it can only make such a ruling when it is called upon to adjudge the legal rights of litigants in actual controversies. Under this rule *Wickard v. Filburn* cannot determine the Appellee's rights in the case at bar.

In order to obtain jurisdiction of this Appeal this Court must amend the Constitution to grant Congress power to regulate intrastate production. Appellee asks if this Court, by such action, is willing to declare that the United States Supreme Court, not the Constitution, is "the Supreme Law of the land"? Will it rule that the American constitutional doctrine of the delegation of limited powers, with the reservation of residual power to the people, is abrogated as of now? Will this Court perpetuate the device, availed of in the past, to mold and modify the Constitution by "construction"? Will it redefine our language to the end that "social progress", espoused by "enlightened" politicians, shall develop, in disregard of individual liberty? If the Court is willing to accept this responsibility, then it should take jurisdiction of this Appeal, and *forever abolish the legal distinction between interstate and intrastate commerce.* It should express, in living language, its complete repudiation of the authority established by the Constitution in the interest of establishing

dictatorship. This type of decision the people can understand and contest; they are powerless to resist the insidious attacks made under the guise of "construction".

Appellee respectfully requests that this Appeal be Dismissed for Want of Jurisdiction. In the alternative, he prays this Court to confirm the Constitutional principles set forth in the opinions of the District Judge; a Judge, who, in long years of judicial experience, has learned to appreciate the true value of such principles in the preservation of our American way of life; such confirmation can be given by affirmance of the Judgment appealed from.

Respectfully submitted,

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*Attorney for Appellee.*

In the

# Supreme Court of the United States

OCTOBER TERM, 1961

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No. 1426 Misc.

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UNITED STATES OF AMERICA,

*Petitioner,*

*v.*

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

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*On Motion for Leave to File a Petition for a Writ of Mandamus and On Petition for a Writ of Mandamus*

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## RESPONDENTS' STATEMENT IN OPPOSITION

In answering Petitioner's Application for Leave to File a Petition for Writ of Mandamus, Respondents incorporate herein by reference all pertinent material set forth in the foregoing Statement Opposing Jurisdiction and Motion to Dismiss or Affirm.

Further answering said Motion, Respondents submit that Petitioner in his application and Petition has wholly failed to meet the requirements of Rule 31 of the Rules of this Court, in that he has failed to establish with particularity why the relief sought cannot be obtained in any other court.

An analysis of the Petition shows that Petitioners claim for relief is predicated upon the theory that the District Court has refused to obey a mandate issued by this Court. Such contention is wholly without support in the record, for while Petitioner contends that the Trial Court is obligated to reverse its judgment entered herein because the Supreme Court held that the Agricultural Adjustment Act was constitutional under the Commerce Clause of the Constitution, the record demonstrates that the District Judge did not render his Judgment on such a ruling. In fact the District Judge in his original opinion specifically stated that he was not placing his decision on that ground; and went on to hold that the application of the Act was in violation of the Constitution. In his opinion, rendered in connection with the order denying Petitioner's Motion for Reversal of the Judgment, the District Judge affirmatively stated that his original opinion and judgment were not granted upon his determination that the Act was unconstitutional. He further pointed out that he was without jurisdiction to enter such a judgment in view of the Statutory reservation of this type of determination to a Three-Judge Court.

In arriving at the decision on which the mandate was issued, the Supreme Court accepted, without legal justification, the Government's claim as to what the District Court held. It is not within the province of this Court to attribute to a District Court a conclusion which is not clearly stated

by that Court. No showing has yet been made by Petitioner that the District Court ever held the Act unconstitutional, and if there were ever any doubt about the question, it is wholly resolved by the opinion of February 2, 1962. (S. J. App. E, pp. 18a-25a.) Where is there authority in law, for this Court to make a determination repudiating a Judge's affirmative statement as to the basis of his judgment?

Assuming for the purpose of argument only, that the Supreme Court was correct in holding that the District Court did hold the Agricultural Adjustment Act unconstitutional; does that give the Supreme Court authority to command the reversal of the Judgment appealed from when the record shows that such Judgment was not predicated solely on that ground? Does this Court have the right by mandate to order a Judge to disregard in toto the findings of law and fact which he has made after an extended trial, developing voluminous evidence on the numerous issues raised by the pleadings? We know of no such legal right.

That other normal remedies are available to the Petitioner is evidenced by the fact that he has already filed Appeals to two Courts. It is established law that the extraordinary writ will not be granted when another remedy is available.

Further, the relief prayed for by Petitioner would call for an order of this Court prohibiting the District Court from exercising the discretion vested in him as a District Judge.

This Court did not see the witnesses or hear the evidence. By what right can it claim to direct a Trial Judge to render a certain decision? It has none.

Respondents submit that the action of the Petitioner is but another move in its poljcy of harassment of the Defendant-Respondent. Having lost its cause after a trial on the merits, it now asks this Court to set aside the Judgment because of this Court's holding that the District Judge was in error on one point of law. Having failed to appeal the Judge's ruling on the other points of law and fact upon which the original judgment was predicated, he cannot now enlist the aid of this Court to overrule those findings made by the District Court.

The only "law of the case" established by the Court's mandate, which was binding on the District Court, was and is that *if* the District Court had held the Agricultural Adjustment Act of 1938 unconstitutional, then to that extent, and to that extent only, the Judgment was to be reversed. Respecting the Court's mandate the District Judge has by written opinion denied that he has ever held such Act unconstitutional, and further affirms, in holding that the Judgment must stand, that it is not based on such a ruling.

This Court is wholly without jurisdiction to entertain the filing of the Petition for the Writ prayed for.

Appellant submits that the Application for leave to file the Petition should be denied, and if such Petition be accepted by this Court, it should be dismissed.

The decision of the District Court on February 2, 1962, has laid to rest the only contention raised by the Petitioner on appeal. This Court should put an end to this litigation. The Application must be denied.

Respectfully submitted,

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